IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 15931 of 1994

Between:

1. C. Sumathidevi, 41 years, D/o Sri late Chakrapani,

2. P. Basavalingam, 41 years, S/o P. Somaiah,

(All are working as Telelphone Operators at A.P. Legislative Assembly, Hyderabad)

..... PETITIONERS

AND

1. The Secretary to Legislature, A.P. Legislative Assembly, Hyderabad.

2. A.Chandrabhaga, A.S.O. Assembly buildings, Hyderabad.

3. V.N. Prasanna Kumari, A.S.O., Assembly buildings, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the first respondent in promoting the second and third respondents as Assistant Sections Officers vide proceedings No. O.O. No. 565/OP.I/94 dt. 25.8.1994 as illegal, arbitrary, discriminatory and in contravention of the A.P. Legislative Assembly Secretariat Service Rules and consequently declare that the petitioners are entitled to be promoted as Assistant Section Officers in preference to the junior most persons; and to pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: MR.M.PRABHAKARA RAO

Counsel for the Respondent No. 1: GP for law and Legislative Affairs.

Counsel for the Respondent Nos. 2 &3: MR.P.V.RAMANA

The Court made the following :

ORAL ORDER:

The action of the first respondent in promoting respondents 2 and 3 as Assistant Section Officers, vide proceedings dated 25.8.1994, is challenged in

this writ petition as illegal, arbitrary discriminatory and in contravention of the A.P. Legislative Assembly Secretariat Service Rules.

The brief facts of the case, to the extent necessary for adjudication of the writ petition, are that the petitioners were appointed as telephone operators on 23.11.1971 and
9-1-1973 respectively and completed their probation on 5.12.1973 and 8-11-1975 respectively. The 2nd and 3rd respondents were appointed as telephone operators on
29-12-1986 and 6-9-1985 respectively.

It is the case of the petitioners that though the 2nd and 3rd respondents were juniors to them in the cadre of telephone operators, which is amongst the feeder cadres for promotion to the post of Assistant Section Officers, they were promoted as Assistant Section Officers and not the petitioners herein. It is their case that the promotion of respondents 2 and 3 as Assistant Section Officers on 25.8.1984 is arbitrary, discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

Mr. M. Prabhakar Rao, learned counsel for the petitioners, at the outset, submits that the petitioners were subsequently promoted as Assistant Section Officers in the year 1999 and if the relief sought for in this writ petition is granted, it would only involve re-fixation of their seniority in the seniority list of Assistant Section Officers. He contends that promotion of respondents 2 and 3, who were admittedly juniors to the petitioners herein, is also in contravention of the A.P. Legislative Assembly Secretariat Service Rules.

In order to examine this contention, it is necessary to examine the said rules. In exercise of the powers conferred by clause 3 of Art. 187 of the Constitution of India, the A.P Legislature Secretariat Service Rules, 1983 were made (herein after called as “the Rules”} and modified in GO Ms. No. 43 dated 15.6.1973. Rule 2 provides that the AP Legislature Services shall consist of the categories of posts specified therein. Among those categories, Assistant Section Officers fall under Category II, Typists and Steno-typists fall under Category V and telephone operators fall under Category VI. Rule 5 relates to the method of appointment to the service and prescribes that appointment to the service for the categories specified in column (1) of Annexure-I to the rules and to the

posts specified in column (2) shall be made by the method specified in column (3) thereof. Rule 6 relates to qualification and thereunder no person shall be eligible for appointment to any of the posts referred to in column (2) of Annexure II to the rules by any of the methods specified in column (3), unless he possesses the qualifications specified in the corresponding entries in column (4) thereof. Rule 8 relates to Selection Categories, which relates to promotion to certain categories, including to the category of Assistant Section Officers, which is to be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. Rule 13 relates to the proportion of recruitment to the posts of Assistant Section Officers and thereunder out of every eight successive substantive vacancies among the posts of Assistant Section Officers, the first three vacancies shall be filled or reserved to be filled by direct recruitment, and the remaining five vacancies shall be filled by promotion of Assistants and Typists including Steno-Typists and Telephone Operators. Rule 15 relates to seniority of Members appointed to the Service by Transfer and sub rule (3) thereunder provides that the seniority of Typists, Steno-Typists and Telephone Operators appointed as Assistants or of Telephone Operators appointed as Typists and Steno-Typists shall be fixed in the category of Assistants or Typists and Steno-Typists, as the case may be, from the date of their appointment in the respective categories. Annexure I relates to the method of appointment and for the posts of Assistant Section Officers in Category II, the method of appointment is by direct recruitment or by promotion of Assistants, Typists, Steno-Typists and Telephone Operators in deserving cases. Annexure II relates to Qualifications for the posts of Assistant Section Officers in Category II. While the method of appointment is both by way of direct recruitment and promotion, the qualification prescribed is a degree of a University in India.

It is not in dispute that respondents 2 and 3 were graduates and that all the persons considered for promotion to the posts of Assistant Section Officers were graduates. It is clear from the counter affidavit that the service record of the petitioners, at the time of promotion of respondents 2 and 3 to the posts of Assistant Section Officers, did not show that they had obtained the requisite qualification of graduation. Sri M. Prabhakar Rao, Learned counsel for the petitioners, contends that the petitioners also possessed the qualification of

graduation. There is however nothing on record to indicate that the petitioners were graduates at the time when respondents 2 and 3 were promoted as Assistant Section Officers or that the petitioners had intimated to the first respondent that they possessed the requisite degree qualification making them eligible for being considered for promotion to the posts of Assistant Section Officers.

As referred to supra, Annexure I provides that promotion to the post of Assistant Section Officers in Category II from among the Category of Telephone Operators shall be made only in deserving cases. Annexure II prescribes the qualification of a degree for promotion to the post of Assistant Section Officers. Further, rule 8 makes it clear that promotion to the post of Assistant Section Officers shall be on the ground of merit and ability, seniority being considered only when merit and ability are approximately equal.

The petitioners contention that they are seniors to respondents 2 and 3 is of no consequence, in as much as promotion to the post of Assistant Section officer is on the ground of merit and ability and it is only where merit and ability are approximately equal that seniority is a factor required to be taken into consideration.

Since there is nothing on record to show that the petitioners had intimated to the respondents that they had obtained the qualification of degree and since the service records of the petitioners at the relevant point of time showed otherwise, the action of the first respondent in promoting respondents 2 and 3, who are graduates, to the post of Assistant Section Officers and in not promoting the petitioners to the said posts cannot be faulted. The petitioners are therefore not entitled to the relief sought for in the writ petition.

For the aforesaid reasons, the writ petition fails and is accordingly dismissed. No costs.

2005. RAMESH RANGANATHAN, J.

Kvsn

To

1. The Secretary to Legislature, A.P. Legislative Assembly, Hyderabad.

2. Two CCs to GP for Law and Legislative Affairs, High Court buildings, Hyderabad.

3. Two CD copies.